

any taxable year shall not exceed the lesser of:

(i) The cost of service amount applicable to the nuclear decommissioning fund for such taxable year (as defined in paragraph (b)(2) of this section); or

(ii) The ruling amount applicable to the nuclear decommissioning fund for such taxable year (as determined under § 1.468A-3).

If the amount of cash payments made (or deemed made) to a nuclear decommissioning fund during any taxable year exceeds the limitation of this paragraph (b)(1), the excess is not deductible by the electing taxpayer. In addition, see paragraph (c) of § 1.468A-5 for rules which provide that the Internal Revenue Service may disqualify a nuclear decommissioning fund if the amount of cash payments made (or deemed made) to a nuclear decommissioning fund during any taxable year exceeds the limitation of this paragraph (b)(1).

(2) *Cost of service amount.* (i) For purposes of section 468A and the regulations thereunder, the “cost of service amount applicable to a nuclear decommissioning fund for a taxable year” is the amount of decommissioning costs included in the electing taxpayer’s cost of service for ratemaking purposes for such taxable year. Decommissioning costs are included in cost of service for a taxable year only to the extent such costs are directly or indirectly charged to customers of the taxpayer by reason of electric energy consumed during such taxable year or are otherwise required to be included in the taxpayer’s income under section 88 and the regulations thereunder.

(ii) Except as otherwise provided in paragraph (b)(4)(i) of § 1.468A-8 (relating to a special transitional rule), decommissioning costs shall generally not be considered included in cost of service for purposes of this section unless—

(A) The order or opinion of the applicable public utility commission identifies the amount of decommissioning costs that is included in cost of service for ratemaking purposes; or

(B) The written records of the ratemaking proceeding clearly and unambiguously indicate the amount of decommissioning costs that is included in

cost of service for ratemaking purposes.

(iii) Except as otherwise provided in paragraph (f)(2) of this section (relating to a special rule that applies to certain retroactive adjustments to interim rate orders), orders or opinions of a public utility commission that are issued after the close of any taxable year shall not be considered in determining the amount of decommissioning costs included in cost of service for such taxable year.

(iv) If a taxpayer possesses a qualifying interest in two or more nuclear power plants that are the subject of a single ratemaking proceeding, the amount of decommissioning costs included in cost of service pursuant to such ratemaking proceeding must be allocated among such nuclear power plants. Such allocation must be reasonable and consistent, and must take into account the assumptions and determinations, if any, used by the public utility commission in establishing or approving the amount of decommissioning costs included in cost of service.

(c) *Deemed payment rules.* (1) The amount of any cash payment made by an electing taxpayer to a nuclear decommissioning fund on or before the 15th day of the third calendar month after the close of any taxable year (the “deemed payment deadline date”) shall be deemed made during such taxable year if the electing taxpayer irrevocably designates the amount as relating to such taxable year on its timely filed Federal income tax return for such taxable year (see paragraph (b)(4)(iv) of § 1.468A-7 for rules relating to such designation).

(2) The amount of any cash payment made by a customer of an electing taxpayer to a nuclear decommissioning fund of such electing taxpayer shall be deemed made by the electing taxpayer if the amount is included in the gross income of the electing taxpayer in the manner prescribed by section 88 and § 1.88-1.

(d) *Treatment of distributions.*—(1) *In general.* Except as otherwise provided in paragraph (d)(2) of this section, the amount of any actual or deemed distribution from a nuclear decommissioning fund shall be included in the

gross income of the electing taxpayer for the taxable year in which the distribution occurs. The amount of any distribution of property equals the fair market value of the property on the date of the distribution. A distribution from a nuclear decommissioning fund shall include an expenditure from the fund or the use of the fund's assets—

(i) To satisfy, in whole or in part, the liability of the electing taxpayer for decommissioning costs of the nuclear power plant to which the fund relates; and

(ii) To pay administrative costs and other incidental expenses of the fund.

See paragraphs (c) and (d) of § 1.468A-5 for rules relating to the deemed distribution of the assets of a nuclear decommissioning fund in the case of a disqualification or termination of the fund.

(2) *Exceptions to inclusion in gross income*—(i) *Payment of administrative costs and incidental expenses.* The amount of any payment by a nuclear decommissioning fund for administrative costs or other incidental expenses of such fund (as defined in paragraph (a)(3)(ii) of § 1.468A-5) shall not be included in the gross income of the electing taxpayer unless such amount is paid to the electing taxpayer (in which case the amount of the payment is included in the gross income of the electing taxpayer under section 61).

(ii) *Withdrawals of excess contributions.* The amount of a withdrawal of an excess contribution (as defined in paragraph (c)(2)(ii) of § 1.468A-5) by an electing taxpayer pursuant to the rules of paragraph (c)(2) of § 1.468A-5 shall not be included in the gross income of the electing taxpayer. See paragraph (b)(1) of this section, which provides that the payment of such amount to the nuclear decommissioning fund is not deductible by the electing taxpayer.

(iii) *Actual distributions of amounts included in gross income as deemed distributions.* If the amount of a deemed distribution is included in the gross income of the electing taxpayer for the taxable year in which the deemed distribution occurs, no further amount is required to be included in gross income when the amount of the deemed distribution is actually distributed by the

nuclear decommissioning fund. The amount of a deemed distribution is actually distributed by a nuclear decommissioning fund as the first actual distributions are made by the nuclear decommissioning fund on or after the date of the deemed distribution.

(e) *Deduction when economic performance occurs.* An electing taxpayer using an accrual method of accounting is allowed a deduction for nuclear decommissioning costs no earlier than the taxable year in which economic performance occurs with respect to such costs (see section 461 (h)(2)). The amount of nuclear decommissioning costs that is deductible under this paragraph (e) is determined without regard to section 280B (see paragraph (b)(5) of § 1.468A-1). A deduction is allowed under this paragraph (e) whether or not a deduction was allowed with respect to such costs under section 468A(a) and paragraph (a) of this section for an earlier taxable year (see paragraph (a)(2) of § 1.468A-8, however, for the effective date applicable to this paragraph (e)).

(f) *Effect of interim rate orders and retroactive adjustments to such orders*—(1) *In general.* (i) The amount of decommissioning costs included in cost of service for any taxable year that ends before the date of a retroactive adjustment to an interim rate order or interim determination of a public utility commission shall include amounts authorized pursuant to such interim rate order or interim determination unless a taxpayer elects the application of paragraph (f)(2) of this section for such taxable year. For purposes of this paragraph (f), a retroactive adjustment occurs on the effective date of the revised rate schedule that implements the retroactive adjustment.

(ii) If a retroactive adjustment to an interim rate order or interim determination reduces the amount of decommissioning costs included in cost of service for one or more taxable years ending before the date of the adjustment, the amount of such reduction must be subtracted from the amount of decommissioning costs included in cost of service (as determined under paragraph (b)(2) of this section) for one or more taxable years ending on or after the date of the adjustment. For this

purpose, the amount of such reduction must be taken into account in the following manner:

(A) If the retroactive adjustment reduces the amount of decommissioning costs included in cost of service for one taxable year ending before the date of the adjustment, the total amount of the reduction must be taken into account for the taxable year that includes the date of the adjustment.

(B) If the retroactive adjustment reduces the amount of decommissioning costs included in cost of service for two taxable years ending before the date of the adjustment, at least one-half of the total amount of the reduction must be taken into account for the first taxable year ending on or after the date of the adjustment and the total amount of the reduction must be taken into account over the first two taxable years ending on or after the date of the adjustment.

(C) If the retroactive adjustment reduces the amount of decommissioning costs included in cost of service for three or more taxable years ending before the date of the adjustment, at least one-third of the total amount of the reduction must be taken into account for the first taxable year ending on or after the date of the adjustment, at least two-thirds of the total amount of the reduction must be taken into account over the first two taxable years ending on or after the date of the adjustment, and the total amount of the reduction must be taken into account over the first three taxable years ending on or after the date of the adjustment.

(2) *Special rule permitting withdrawal of excess contribution that results from retroactive adjustment to interim rate order.* (i) If a retroactive adjustment that reduces the amount of decommissioning costs included in cost of service for a taxable year occurs on or before the date prescribed by law (including extensions) for filing the return of the nuclear decommissioning fund for such taxable year, a taxpayer may elect the application of this paragraph (f)(2) for such taxable year by—

(A) Including in the amount of decommissioning costs included in cost of service for such taxable year only the amount of decommissioning costs

authorized for such taxable year under the retroactive adjustment; and

(B) Withdrawing any excess contribution that results from such treatment in accordance with the rules of paragraph (c)(2) of § 1.468A-5.

(ii) If a taxpayer elects the application of this paragraph (f)(2) for any taxable year, the retroactive adjustment shall not be treated for purposes of paragraph (f)(1)(ii) of this section as a reduction in the amount of decommissioning costs included in cost of service for such taxable year.

(3) *Revised schedule of ruling amounts.* If the rules provided in this paragraph (f) result in a cost of service amount applicable to a nuclear decommissioning fund for any taxable year that is less than the cost of service amount applicable to the nuclear decommissioning fund for the immediately preceding taxable year, the taxpayer must request a revised schedule of ruling amounts on or before the deemed payment deadline date for the taxable year in which the retroactive adjustment occurs. The first taxable year to which the revised schedule of ruling amount applies shall be the taxable year in which the retroactive adjustment occurs.

(4) *Example.* The following example illustrates the application of the principles of this paragraph (f):

Example. (i) X corporation is a calendar year, accrual method taxpayer engaged in the sale of electric energy generated by a nuclear power plant owned by X. During 1989, X is authorized pursuant to an interim rate order issued by the public utility commission of State A to collect nuclear decommissioning costs of \$500,000 per year beginning on January 1, 1990. On May 1, 1992, the public utility commission of State A issues a final rate order that is effective on July 1, 1992. The final rate order authorizes X to collect decommissioning costs of \$400,000 per year and requires X to refund to the ratepayers of State A excess decommissioning costs of \$250,000 collected between January 1, 1990, and July 1, 1992.

(ii) If X elects the application of paragraph (f)(2) of this section for the 1991 taxable year, the amount of decommissioning costs included in cost of service for such taxable year is \$400,000. If X made a contribution of \$500,000 to a nuclear decommissioning fund for the 1991 taxable year, X must withdraw \$100,000 from the nuclear decommissioning fund on or before the date prescribed by law (including extensions) for filing the return of

the nuclear decommissioning fund for the 1991 taxable year (see paragraph (c)(2) of § 1.468A-5).

(iii) In addition, under paragraph (f)(1)(i) of this section, the amount of decommissioning costs included in cost of service for the 1990 taxable year is \$500,000, and, under paragraph (f)(1)(ii) of this section, the amount of decommissioning costs included in cost of service for the 1992 taxable year is \$300,000. Because the cost of service amount for the 1991 taxable year (\$400,000) is less than the cost of service amount for the 1990 taxable year (\$500,000), paragraph (f)(3) of this section applies and X must file a request for a revised schedule of ruling amounts for the period beginning with the 1992 taxable year on or before March 15, 1993.

(iv) Alternatively, if X does not elect the application of paragraph (f)(2) section, the amount of decommissioning costs included in cost of service for the 1990 and 1991 taxable years is \$500,000, and, under paragraph (f)(1)(ii) of this section, the amount of decommissioning costs included in cost of service for the 1992 taxable year may not exceed \$300,000. Because the cost of service amount for the 1992 taxable year is less than the cost of service amount for the 1991 taxable year, paragraph (f)(3) of this section applies and X must file a request for a revised schedule of ruling amounts for the period beginning with the 1992 taxable year on or before March 15, 1993.

[T.D. 8184, 53 FR 6806, Mar. 3, 1988, as amended by T.D. 8461, 57 FR 62199, Dec. 30, 1992]

§ 1.468A-3 Ruling amount.

(a) *In general.* (1) Except as otherwise provided in paragraph (j) of this section, an electing taxpayer is allowed a deduction under section 468A(a) for the taxable year in which the taxpayer makes a cash payment (or is deemed to make a cash payment) to a nuclear decommissioning fund only if the taxpayer has received a schedule of ruling amounts for the nuclear decommissioning fund that includes a ruling amount for such taxable year. Except as provided in paragraph (a) (4) or (5) of this section, a schedule of ruling amounts for a nuclear decommissioning fund ("schedule of ruling amounts") is a ruling (within the meaning of paragraph (a)(2) of § 601.201) specifying the annual payments ("ruling amounts") that, over the taxable years remaining in the "funding period" as of the date the schedule first applies, will result in a projected balance of the nuclear decommissioning fund as of the last day of the funding period equal to (and in

no event greater than) the "amount of decommissioning costs allocable to the fund." The projected balance of a nuclear decommissioning fund as of the last day of the funding period shall be calculated by taking into account the fair market value of the assets of the fund as of the first day of the first taxable year to which the schedule of ruling amounts applies and the estimated rate of return to be earned by the assets of the fund after payment of the estimated administrative costs and incidental expenses to be incurred by the fund (as defined in paragraph (a)(3)(ii) of § 1.468A-5), including all Federal, State and local income taxes to be incurred by the fund (the "after-tax rate of return"). See paragraph (c) of this section for a definition of funding period and paragraph (d) of this section for guidance with respect to the amount of decommissioning costs allocable to a fund.

(2) To the extent consistent with the principles and provisions of this section, each schedule of ruling amounts shall be based on the reasonable assumptions and determinations used by the applicable public utility commission(s) in establishing or approving the amount of decommissioning costs to be included in cost of service for rate-making purposes, taking into account amounts that are otherwise required to be included in the taxpayer's income under section 88 and the regulations thereunder. Thus, for example, each schedule of ruling amounts shall be based on the public utility commission's reasonable assumptions concerning—

(i) The after-tax rate of return to be earned by the amounts collected for decommissioning;

(ii) The total estimated cost of decommissioning the nuclear power plant (see paragraph (d)(2) of this section); and

(iii) The frequency of contributions to a nuclear decommissioning fund for a taxable year (*e.g.*, monthly, quarterly, semi-annual or annual contributions).

(3) The Internal Revenue Service shall provide a schedule of ruling amounts that is identical to the schedule of ruling amounts proposed by the

taxpayer in connection with the taxpayer's request for a schedule of ruling amounts (see paragraph (h)(2)(viii) of this section), but no schedule of ruling amounts shall be provided unless the taxpayer's proposed schedule of ruling amounts is consistent with the principles and provisions of this section. If a proposed schedule of ruling amounts is not consistent with the principles and provisions of this section, the taxpayer may propose an amended schedule of ruling amounts that is consistent with such principles and provisions.

(4) If, in establishing or approving the amount of decommissioning costs to be included in cost of service for ratemaking purposes, the applicable public utility commission uses an estimated cost of decommissioning that is based on price levels in effect at the time of the ratemaking proceeding (*i.e.*, the public utility commission does not estimate the cost of decommissioning in future dollars), the Internal Revenue Service may, in its discretion, provide a formula or method for determining a schedule of ruling amounts (rather than a schedule specifying a dollar amount for each taxable year) that is consistent with the principles and provisions of this section. See paragraph (i)(1)(ii) of this section for a special rule relating to the mandatory review of ruling amounts that are determined pursuant to a formula or method.

(5) The Internal Revenue Service may, in its discretion, provide a schedule of ruling amounts that is determined on a basis other than the rules of paragraphs (a) through (g) of this section if—

(i) In connection with its request for a schedule of ruling amounts, the taxpayer explains the need for special treatment and sets forth an alternative basis for determining the schedule of ruling amounts; and

(ii) The Internal Revenue Service determines that special treatment is consistent with the purpose of section 468A.

(b) *Level funding limitation.* (1) Except as otherwise provided in paragraph (b)(4) of this section and paragraph (b)(6) of § 1.468A-8 (relating to a special transitional rule), the ruling amount

specified in a schedule of ruling amounts for any taxable year in the level funding limitation period shall not be less than the ruling amount specified in such schedule for any earlier taxable year.

(2) For purposes of this section, the level funding limitation period for a nuclear decommissioning fund is the period that—

(i) Begins on the first day of the first taxable year for which a deductible payment is made (or deemed made) to such nuclear decommissioning fund (see paragraph (a) of § 1.468A-2 for rules relating to the first taxable year for which a payment may be made (or deemed made) to a nuclear decommissioning fund); and

(ii) Ends on the last day of the taxable year that includes the estimated date on which the nuclear power plant to which the nuclear decommissioning fund relates will no longer be included in the taxpayer's rate base for ratemaking purposes (see paragraphs (e) (2) and (4) of this section).

(3) The ruling amount specified in a schedule of ruling amounts for a taxable year after the end of the level funding limitation period may be less than the ruling amount specified in such schedule for an earlier taxable year.

(4) The ruling amount specified in a schedule of ruling amounts for the last taxable year in the level funding limitation period may be less than the ruling amount specified in such schedule for any earlier taxable year if the applicable public utility commission assumes for cost of service purposes that decommissioning costs will be included in cost of service for only a portion of the last taxable year in the level funding limitation period. The ruling amount for the last taxable year in the level funding limitation period, however, may not be less than the amount that bears the same relationship to the ruling amount for the preceding taxable year as the period for which decommissioning costs will be included in cost of service for such last taxable year bears to one year.

(c) *Funding period*—(1) *General rule.* For purposes of this section, the funding period for a nuclear decommissioning fund is the period that—

(i) Begins on the first day of the first taxable year for which a deductible payment is made (or deemed made) to such nuclear decommissioning fund (see paragraph (a)(1) § 1.468A-2 for rules relating to the first taxable year for which a payment may be made (or deemed made) to a nuclear decommissioning fund); and

(ii) Ends on the later of—

(A) The last day of the taxable year that includes the estimated date on which decommissioning costs of the nuclear power plant to which the nuclear decommissioning fund relates will no longer be included in the taxpayer's cost of service for ratemaking purposes (see paragraph (e)(1) of this section); or

(B) The last day of the taxable year that includes the estimated date on which the nuclear power plant to which the nuclear decommissioning fund relates will no longer be included in the taxpayer's rate base for ratemaking purposes (see paragraph (e)(2) of this section).

(2) *Examples.* The following examples illustrate the application of the principles of paragraphs (a), (b) and (c) of this section:

Example (1). (i) X corporation is a calendar year, accrual method taxpayer engaged in the sale of electric energy generated by power plants owned by X. On March 15, 1995, X commences the construction of a nuclear power plant in State A. On May 15, 1995, the public utility commission of State A issues a final rate order for the four-year period beginning on January 1, 1995, that authorizes X to collect decommissioning costs from ratepayers residing in State A. For the 1995 taxable year, X is authorized to collect decommissioning costs of \$500,000, and, for each taxable year during the remainder of the period to which the rate order applies, X is authorized to collect decommissioning costs in an amount equal to 105 percent of the amount authorized to be collected for the preceding taxable year.

(ii) In determining the amount of decommissioning costs to be collected from ratepayers residing in State A, the public utility commission assumes that (A) decommissioning costs will be included in cost of service for each taxable year in the period that begins with 1995 and ends with 2025 and (B) decommissioning costs collected pursuant to subsequent rate orders will increase in the same manner as amounts collected pursuant to the rate order issued on May 15, 1995. In addition, in determining the rate of return

to be earned by X with respect to the nuclear power plant, the public utility commission assumes that the nuclear power plant will be included in rate base for each year in the period that begins with 2000 and ends with 2025.

(iii) X requests a schedule of ruling amounts in accordance with the rules of paragraph (h) of this section for the period beginning with the 1995 taxable year. In determining the level funding limitation period and the funding period, the Internal Revenue Service shall assume that a deductible payment will be made to a nuclear decommissioning fund for the 1995 taxable year. Thus, under paragraph (b) of this section, the level funding limitation period begins on January 1, 1995, and ends on December 31, 2025. Under paragraph (c)(1) of this section, the funding period begins on January 1, 1995, and ends on December 31, 2025.

(iv) In its request for a schedule or ruling amounts, X proposes a ruling amount for each taxable year in the funding period that corresponds to the projected cost of service amount for such taxable year. If (A) the assumptions and determinations used by the public utility commission in establishing the amount of decommissioning costs to be included in cost of service are reasonable and (B) the amounts collected pursuant to the proposed schedule, combined with the after-tax earnings on such amounts, will result in a projected balance of the nuclear decommissioning fund as of December 31, 2025, equal to the amount of decommissioning costs allocable to the fund, then, under paragraph (a)(3) of this section, each ruling amount in the initial schedule of ruling amounts shall equal the ruling amount proposed by X in connection with its request for a schedule of ruling amounts. Thus, the ruling amount for the 1995 taxable year would be \$500,000, and the ruling amount for each subsequent taxable year would be 105 percent of the ruling amount for the preceding taxable year.

Example (2). (i) Assume the same facts as in Example (1), except that on May 15, 1995, the public utility commission of State A issues a final rate order for the four-year period beginning on January 1, 1995, that authorizes X to collect decommissioning costs of \$600,000 per year from ratepayers residing in State A. In determining the amount of decommissioning costs to be collected from ratepayers residing in State A, the public utility commission assumes that decommissioning costs of \$600,000 will be collected for each taxable year in the period that begins with 1995 and ends with 2004 and that decommissioning costs of \$200,000 will be collected for each taxable year in the period that begins with 2005 and ends with 2025.

(ii) X requests a schedule of ruling amounts in accordance with the rules of paragraph (h) of this section for the period